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**Supreme Court of the United States**

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OCTOBER TERM, 1942.

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No. 1217

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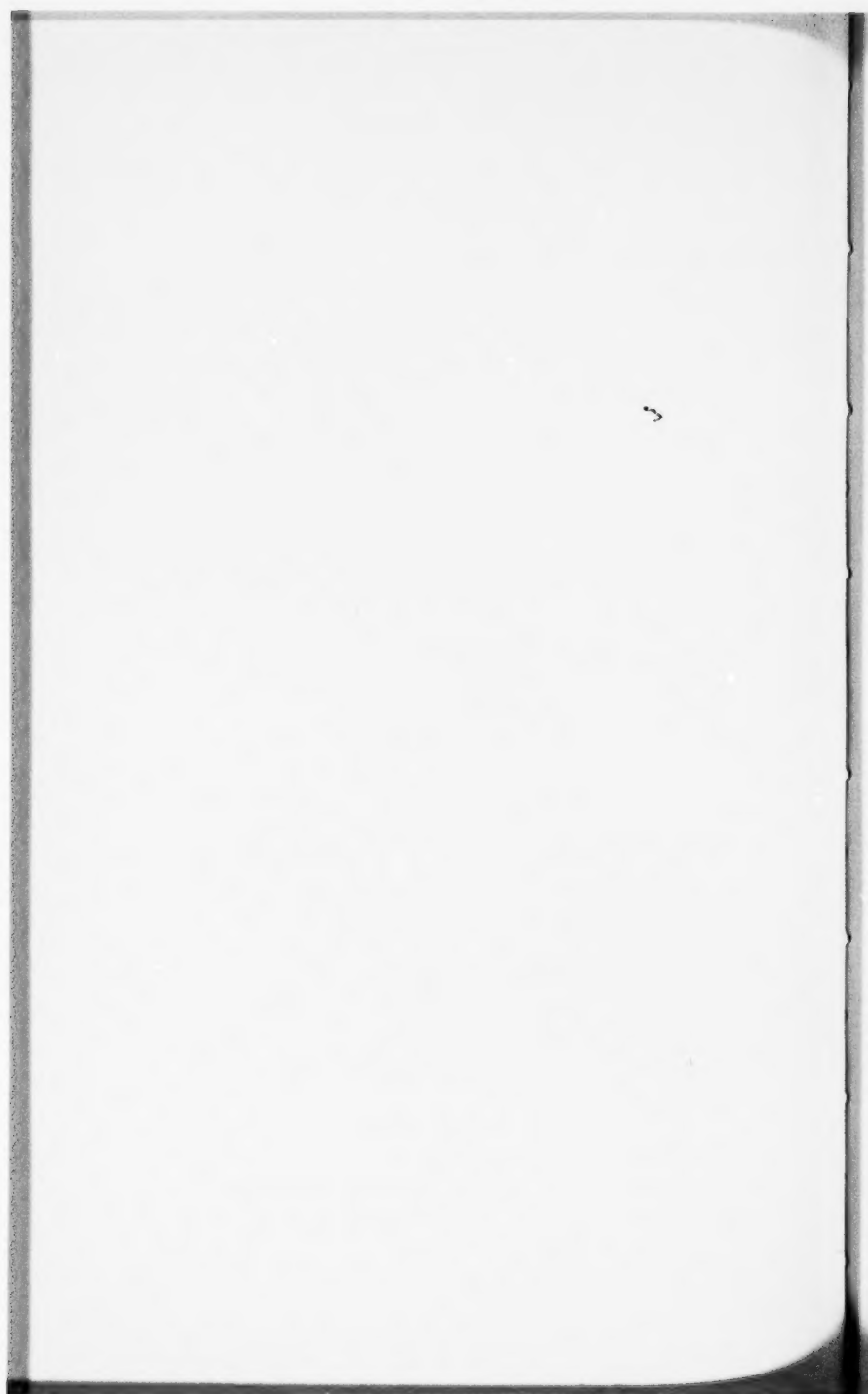
GEORGE H. KEYS, PETITIONER,  
VS.  
UNITED STATES OF AMERICA, RESPONDENT.

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**PETITION FOR WRIT OF CERTIORARI AND BRIEF  
IN SUPPORT THEREOF.**

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Point C—The word “injury” is a generic term. Since the result of the act is injurious or merely harmful depending upon whether the act is tortious or lawful, it is not enough for the indictment to charge that a “threat to injure” was made, as that is but the statement of a conclusion. All of the elements that go to make an “injury” must be pleaded \_\_\_\_\_ 18

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# Supreme Court of the United States

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GEORGE H. KEYS, PETITIONER,

VS.

UNITED STATES OF AMERICA, RESPONDENT.

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## PETITION FOR WRIT OF CERTIORARI.

To the Honorable, the Chief Justice, and the Associate Justices of the Supreme Court of the United States:

Petition of George H. Keys, for a writ of certiorari directed to the United States Circuit Court of Appeals of the Eighth Circuit, to bring before the Supreme Court the case of George H. Keys, Defendant-Appellant, against United States of America, Plaintiff-Respondent.

Said petitioner respectfully shows to this Honorable Court:

### A.

#### SUMMARY OF MATTER INVOLVED.

(a) Petitioner was charged in the indictment with mailing a letter containing "a threat to injure the reputation of the addressee." The indictment (Appendix A)

was silent as to any legal right that had been threatened with invasion. The evidence disclosed that the act threatened to be done was distribution of a pamphlet, which pamphlet dealt with the subject of the harmful effects of aluminum kitchen utensils upon human health. There was no competent evidence of the falsity of its contents. In fact, counsel for respondent on page eleven of their Brief stated, the "question of their falsity was not an issue." At the close of the evidence petitioner's motion for discharge was overruled. In affirming the judgment, the Court of Appeals in its opinion stated:

"\* \* \* It is claimed, for example, that the indictment failed to charge that the pamphlet which defendant threatened to distribute contained false representations and that defendant knew them to be false. These matters are not elements of the offense defined in the statute. They are, therefore, immaterial. \* \* \* None of these alleged omissions constitutes defects open to attack after verdict and in this court. None of them is an essential element of the offense. \* \* \* (R. 64).

(b) The opinion stated that the offense had three essential elements: *First*, intent; *second*, transmission through the mails of a communication, and *third*, that said letter contained a "threat." The court thereupon and as a part of the third element undertook to describe the injury by quoting from the indictment as follows:

"\* \* \* the said injury to the reputation of the addressee contemplated as aforesaid being embraced by a threat in said communication contained that the said George H. Keys would distribute a pamphlet to the public to the effect that the use of aluminum cooking utensils is harmful and is a causative factor in diabetes and other diseases" (R. 61).

(c) The petitioner's eleventh assignment alleges a complete failure of evidence tending to establish that the petitioner threatened to violate or did violate any legal

right of the addressee, and that because thereof he was entitled to a discharge at the conclusion of the evidence. In Assignment fourteen, complaint is made that the

"indictment herein utterly fails to aver facts disclosing that the alleged acts or threat of the defendant constitute a violation of a legal right of the addressee" (R. 55).

## B.

### STATEMENT OF BASIS OF JURISDICTION.

The jurisdiction of this Court is invoked under Sec. 240 of the Judicial Code as amended by Act of Congress February 13, 1925, Ch. 229, 43 Stat. 938 (28 U. S. C. A. 347).

The judgment of affirmation sought to be reviewed was rendered on March 2, 1942 (R. 58); the Motion for Rehearing was denied March 26, 1942 (R. 68); Petition to Stay Issuance of Mandate was sustained April 6, 1942, and petitioner files his Petition for Writ of Certiorari within one month from April 6, 1942.

This action was based upon the laws of the United States, to-wit: Section 408d (c) of the Criminal Code as amended May 15, 1939, 18 U. S. C. A. 408d (c), the pertinent provisions of which are as follows:

"Whoever with intent to extort from any person, firm, association or corporation, any money or other thing of value, shall transmit in interstate commerce by any means whatsoever any communication containing any threat to injure the property or reputation of the addressee \* \* \* shall be fined not more than \$500 or imprisoned not more than two years, or both."

18 U. S. C. A. 408d, Par. c.

The following cases, it is believed, sustain the jurisdiction of this Court to issue its Writ of Certiorari:

*Alabama Power Co. v. Ickes*, 302 U. S. 464, 479,  
58 S. C. R. 300, 303.

- Keogh v. Ry. Co.*, 260 U. S. 156, 157.  
 Restatement of the Law of Torts, page 16, Section 7.  
*Burnsides v. State*, (Tex.) 102 S. W. 118, 120, 121.  
*McKay v. Retail Auto, etc., Union*, 106 Pac. 2d 373, 374, 379 (Calif.).  
*United States v. Hess*, 124 U. S. 483, 487, 8 S. C. R. 571.  
*United States v. Cruikshank*, 92 U. S. 542, 558.  
*United States v. Carll*, 105 U. S. 611, 613.  
*Fontana v. United States*, 262 Fed. 283, 288.

## C.

## QUESTIONS INVOLVED.

(a) Petitioner's position is that the term "injure" as used in the Statute means a wrong which directly results from the violation of a legal right; that therefore it was necessary that the indictment set forth sufficient facts to show that the thing threatened to be done was an act calculated to violate a legal right of the addressee.

(b) In undertaking to define the wrong charged, the indictment alleges:

"\* \* \* the said injury to the reputation of the addressee contemplated as aforesaid being embraced by a threat in said communication contained that the said George H. Keys would distribute a pamphlet to the public to the effect that the use of aluminum cooking utensils is harmful and is a causative factor in diabetes and other diseases."

It is not charged in the indictment that any of the statements in the pamphlet are false.

Our position is that the term "injury" is a generic term and it is therefore not sufficient that the indictment shall charge the offense in the same generic terms as the definition contained in the statute, but it must state the species—it must descend to particulars.



(c) The opinion assumes that the particulars which constitute the ingredients of the "injury" are not essential elements of the wrong. In this the opinion is in conflict with decisions of this court.

(d) The word "injury" has a definite legal significance, to-wit: the result or consequence of the invasion of a legal right or of violation of a legal duty. It also has a vernacular meaning of harm, unnecessarily preceded by the violation of a legal right. The term, therefore, being generic, it does not necessarily signify a legal wrong, as was held in the opinion below. It is an elemental rule of Criminal Law that when language does not constitute a crime if uttered under some circumstances, and does constitute a crime if uttered under other circumstances, it is not enough to charge that it was used with intent to violate the law. That would be a mere conclusion. Facts must be set forth so that the court can determine and not the pleader whether or not such facts constitute a crime. Our position rests upon decisions of this court to this effect. The opinion holds contrarily.

(e) 18 U. S. C. A., Section 408d, Par. c, is a new statute having been enacted in 1939, and has not as yet been construed. The phrase, "any threat to injure the property," etc., because of the double meaning of the word "injure" is ambiguous and uncertain. We claim the lower court erred in resolving this ambiguity in favor of the Government and against the petitioner in absence of evidence to support the same.

(f) The Government failed to adduce any competent evidence showing or tending to show a threat to circulate false statements regarding addressee. The trial court, however, overruled petitioner's motion for discharge, which action was upheld by the Court of Appeals. This we claim worked a substantial deprivation of petitioner's fundamental rights.

## D.

**REASONS FOR THE WRIT.**

(a) The indictment herein failed to state what, if any, wrongful or unlawful act petitioner threatened to commit. No attack was made upon it in the trial court, but in the Circuit Court of Appeals said defect was attacked, being one of substance in that it consisted of the omission of an essential element of the offense charged. The opinion holds said attack came too late (R. 64). This is in conflict with the decision of *United States v. Hess*, 124 U. S. 483, and the following decisions of the 6th and 9th Circuits of the United States Circuit Court of Appeals: *Reimer-Gross Co. v. U. S.*, 20 F. 2d 36, 38 (C. C. A. 6); *Rasmussen v. Carpet Co.*, 31 F. 2d 88 (C. C. A. 9).

(b) The Court of Appeals failed to give effect to the legal definition of the term "injure" as stated by this court in the case of *Alabama P. Co. v. Ickes*, 302 U. S. 464. Attention to this controlling decision was particularly directed by petitioner in his main brief and in Motion for Rehearing (R. 65, 68).

Wherefore, your petitioner respectfully prays that a Writ of Certiorari be issued under the seal of this court directed to the United States Circuit Court of Appeals for the Eighth Circuit, commanding that court to certify and send to this Court for its review and determination on a day certain therein named a full and complete transcript of the record and proceedings in the case of *George H. Keys, Appellant v. United States of America, Appellee*, No. 12069, to the end that this cause may be reviewed and determined by this Court provided for in the Stat-

utes of the United States, and that said decree and judgment of the United States Circuit Court of Appeals for the Eighth Circuit may be reversed by this Honorable Court and that of the District Court reversed, and that your Petitioner may have such other and further relief in the premises as to this Honorable Court may seem met and just.

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